

## Internal Revenue Service, Treasury

## § 1.143(g)-1

(c) *Manner of making election.* An election under section 142(f)(4)(B) must be captioned “ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING”, must be signed under penalties of perjury by a person who has authority to sign on behalf of the local furnisher, and must contain the following information—

- (1) The name of the local furnisher;
  - (2) The tax identification number of the local furnisher;
  - (3) The complete address of the local furnisher;
  - (4) The date of the service area expansion;
  - (5) Identification of each bond issue subject to the election, including the complete name of each issue, the tax identification number of each issuer, the report number of the information return filed under section 149(e) for each issue, the issue date of each issue, the CUSIP number (if any) of the bond with the latest maturity of each issue, the issue price of each issue, the adjusted issue price of each issue as of the date of the election, the earliest date on which the bonds of each issue may be redeemed, and the principal amount of bonds of each issue to be redeemed on the earliest redemption date;
  - (6) A statement that the local furnisher making the election agrees to the conditions stated in section 142(f)(4)(B); and
  - (7) A statement that each issuer of the bonds subject to the election has received written notice of the election.
- (d) *Effect on section 150(b).* Except as provided in paragraph (e) of this section, if a local furnisher files an election within the period specified in paragraph (b) of this section, section 150(b) does not apply to bonds identified in the election during and after that period.
- (e) *Effect of failure to meet agreements.* If a local furnisher fails to meet any of the conditions stated in an election pursuant to paragraph (c)(6) of this section, the election is invalid.
- (f) *Corresponding provisions of the Internal Revenue Code of 1954.* Section 103(b)(4)(E) of the Internal Revenue Code of 1954 set forth corresponding requirements for the exclusion from gross income of the interest on bonds

issued for facilities for the local furnishing of electric energy or gas. For the purposes of this section any reference to sections 142(a)(8) and (f) of the Internal Revenue Code of 1986 includes a reference to the corresponding portion of section 103(b)(4)(E) of the Internal Revenue Code of 1954.

(g) *Effective dates.* This section applies to elections made on or after January 19, 2001.

[T.D. 8941, 66 FR 4671, Jan. 18, 2001]

### § 1.143(g)-1 Requirements related to arbitrage.

(a) *In general.* Under section 143, for an issue to be an issue of qualified mortgage bonds or qualified veterans' mortgage bonds (together, mortgage revenue bonds), the requirements of section 143(g) must be satisfied. An issue satisfies the requirements of section 143(g) only if such issue meets the requirements of paragraph (b) of this section and, in the case of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans, such issue also meets the requirements of paragraph (c) of this section. The requirements of section 143(g) and this section are applicable in addition to the requirements of section 148 and §§ 1.148-0 through 1.148-11.

(b) *Effective rate of mortgage interest not to exceed bond yield by more than 1.125 percentage points—(1) Maximum yield.* An issue shall be treated as meeting the requirements of this paragraph (b) only if the excess of the effective rate of interest on the mortgages financed by the issue, over the yield on the issue, is not greater over the term of the issue than 1.125 percentage points.

(2) *Effective rate of interest.* (i) In determining the effective rate of interest on any mortgage for purposes of this paragraph (b), there shall be taken into account all fees, charges, and other amounts borne by the mortgagor that are attributable to the mortgage or to the bond issue. Such amounts include points, commitment fees, origination fees, servicing fees, and prepayment penalties paid by the mortgagor.

(ii) Items that shall be treated as borne by the mortgagor and shall be

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taken into account in calculating the effective rate of interest also include—

(A) All points, commitment fees, origination fees, or similar charges borne by the seller of the property; and

(B) The excess of any amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property when owner-financing is not provided through the use of mortgage revenue bonds.

(iii) The following items shall not be treated as borne by the mortgagor and shall not be taken into account in calculating the effective rate of interest—

(A) Any expected rebate of arbitrage profit under paragraph (c) of this section; and

(B) Any application fee, survey fee, credit report fee, insurance charge or similar settlement or financing cost to the extent such amount does not exceed amounts charged in the area in cases when owner-financing is not provided through the use of mortgage revenue bonds. For example, amounts paid for Federal Housing Administration, Veterans' Administration, or similar private mortgage insurance on an individual's mortgage, or amounts paid for pool mortgage insurance on a pool of mortgages, are not taken into account so long as such amounts do not exceed the amounts charged in the area with respect to a similar mortgage, or pool of mortgages, that is not financed with mortgage revenue bonds. For this purpose, amounts paid for pool mortgage insurance include amounts paid to an entity (for example, the Government National Mortgage Association, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation, or other mortgage insurer) to directly guarantee the pool of mortgages financed with the bonds, or to guarantee a pass-through security backed by the pool of mortgages financed with the bonds.

(C) The following example illustrates the provisions of this paragraph (b)(2)(iii):

*Example.* Housing Authority X issues bonds intended to be qualified mortgage bonds under section 143(a). At the time the bonds

are issued, X enters into an agreement with a group of mortgage lending institutions (lenders) under which the lenders agree to originate and service mortgages that meet certain specified requirements. After originating a specified amount of mortgages, each lender issues a "pass-through security" (each, a PTS) backed by the mortgages and sells the PTS to X. Under the terms of the PTS, the lender pays X an amount equal to the regular monthly payments on the mortgages (less certain fees), whether or not received by the lender (plus any prepayments and liquidation proceeds in the event of a foreclosure or other disposition of any mortgages). FNMA guarantees the timely payment of principal and interest on each PTS. From the payments received from each mortgagor, the lender pays a fee to FNMA for its guarantee of the PTS. The amounts paid to FNMA do not exceed the amounts charged in the area with respect to a similar pool of mortgages that is not financed with mortgage revenue bonds. Under this paragraph (b)(2)(iii), the fees for the guarantee provided by FNMA are an insurance charge because the guarantee is pool mortgage insurance. Because the amounts charged for the guarantee do not exceed the amounts charged in the area with respect to a similar pool of mortgages that is not financed with mortgage revenue bonds, the amounts charged for the guarantee are not taken into account in computing the effective rate of interest on the mortgages financed with X's bonds.

(3) *Additional rules.* To the extent not inconsistent with the Tax Reform Act of 1986, Public Law 99-514 (the 1986 Act), or subsequent law, § 6a.103A-2(i)(2) (other than paragraphs (i)(2)(i) and (i)(2)(ii)(A) through (C)) of this chapter applies to provide additional rules relating to compliance with the requirement that the effective rate of mortgage interest not exceed the bond yield by more than 1.125 percentage points.

(c) *Arbitrage and investment gains to be used to reduce costs of owner-financing.* As provided in section 143(g)(3), certain earnings on nonpurpose investments must either be paid or credited to mortgagors, or paid to the United States, in certain circumstances. To the extent not inconsistent with the 1986 Act or subsequent law, § 6a.103A-2(i)(4) of this chapter applies to provide guidance relating to compliance with this requirement.

(d) *Effective dates—(1) In general.* Except as otherwise provided in this section, § 1.143(g)-1 applies to bonds sold

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on or after May 23, 2005, that are subject to section 143.

(2) *Permissive retroactive application in whole.* Except as provided in paragraph (d)(4) of this section, issuers may apply § 1.143(g)-1, in whole, but not in part, to bonds sold before May 23, 2005, that are subject to section 143.

(3) *Bonds subject to the Internal Revenue Code of 1954.* Except as provided in paragraph (d)(4) of this section and subject to the applicable effective dates for the corresponding statutory provisions, an issuer may apply § 1.143(g)-1, in whole, but not in part, to bonds that are subject to section 103A(i) of the Internal Revenue Code of 1954.

(4) *Special rule for pre-July 1, 1993 bonds.* To the extent that an issuer applies this section to bonds issued before July 1, 1993, § 6a.103A-2(i)(3) of this chapter also applies to the bonds.

[T.D. 9204, 70 FR 29449, May 23, 2005]

### § 1.144-0 Table of contents.

This section lists the captioned paragraphs contained in §§ 1.144-1 and 1.144-2.

*§ 1.144-1 Qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds.*

- (a) Overview.
- (b) Scope.
- (c) Effective dates.

*§ 1.144-2 Remedial actions.*

[T.D. 8712, 62 FR 2303, Jan. 16, 1997]

### § 1.144-1 Qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(D), a qualified small issue bond issued under section 144(a) may be a qualified bond. Under section 144(a), any qualified small issue bond is any bond issued as a part of an issue 95 percent or more of the proceeds of which are to be used to provide certain manufacturing facilities or certain depreciable farm property and which meets other requirements. Under section 141(e)(1)(F) a qualified redevelopment bond issued under section 144(c) is a qualified bond. Under section 144(c), a qualified redevelopment bond is any bond issued as a part of an issue

95 percent or more of the net proceeds of which are to be used for one or more redevelopment purposes and which meets certain other requirements.

(b) *Scope.* Sections 1.144-0 through 1.144-2 apply for purposes of the rules for small issue bonds under section 144(a) and qualified redevelopment bonds under section 144(c), except that § 1.144-2 does not apply to the requirements for qualified small issue bonds under section 144(a)(4) (relating to the limitation on capital expenditures) or under section 144(a)(10) (relating to the aggregate limit of tax-exempt bonds per taxpayer).

(c) *Effective dates.* For effective dates of §§ 1.144-0 through 1.144-2, see § 1.141-16.

[T.D. 8712, 62 FR 2303, Jan. 16, 1997]

### § 1.144-2 Remedial actions.

The remedial action rules of § 1.142-2 apply to qualified small issue bonds issued under section 144(a) and to qualified redevelopment bonds issued under section 144(c), for this purpose treating those bonds as exempt facility bonds and the qualifying purposes for those bonds as exempt facilities.

[T.D. 8712, 62 FR 2303, Jan. 16, 1997]

### § 1.145-0 Table of contents.

This section lists the captioned paragraphs contained in §§ 1.145-1 and 1.145-2.

*§ 1.145-1 Qualified 501(c)(3) bonds.*

- (a) Overview.
- (b) Scope.
- (c) Effective dates.

*§ 1.145-2 Application of private activity bond regulations.*

- (a) In general.
- (b) Modification of private business tests.
- (c) Exceptions.
  - (1) Certain provisions relating to governmental programs.
  - (2) Costs of issuance.
  - (d) Issuance costs financed by prior issue.

[T.D. 8712, 62 FR 2303, Jan. 16, 1997, as amended by T.D. 9234, 70 FR 75035, Dec. 19, 2005]

### § 1.145-1 Qualified 501(c)(3) bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(G), a qualified 501(c)(3)